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ABSTRACT

Music educators are informed of the applications of the 1976 revision of the United States copyright law to the use of sheet music, audiovisual recordings, and dramatic and choreographic works. Material is divided into five sections. Section 1 outlines the primary rights of copyright holders with regard to phonorecords, derivative works, distribution of recordings, and performance and display of works. Section 2 details the limitations on copyrights. Duration of copyrights are explained in section 3 and the various penalties for infringement on copyright law are described in section 4. A final section contains other relevant information, including how to tell if a work is copyrighted, how to obtain out-of-print material, and lists of contact organizations dealing with performance rights, recording rights, and dramatic music. Appendices contain the fair use and library reproduction sections of the 1976 law, guidelines with respect to copyrighted music material, guidelines with respect to copyrighted books and periodicals, and copies of the form for requesting permission to arrange music and the form for requesting out-of-print material. (LP)

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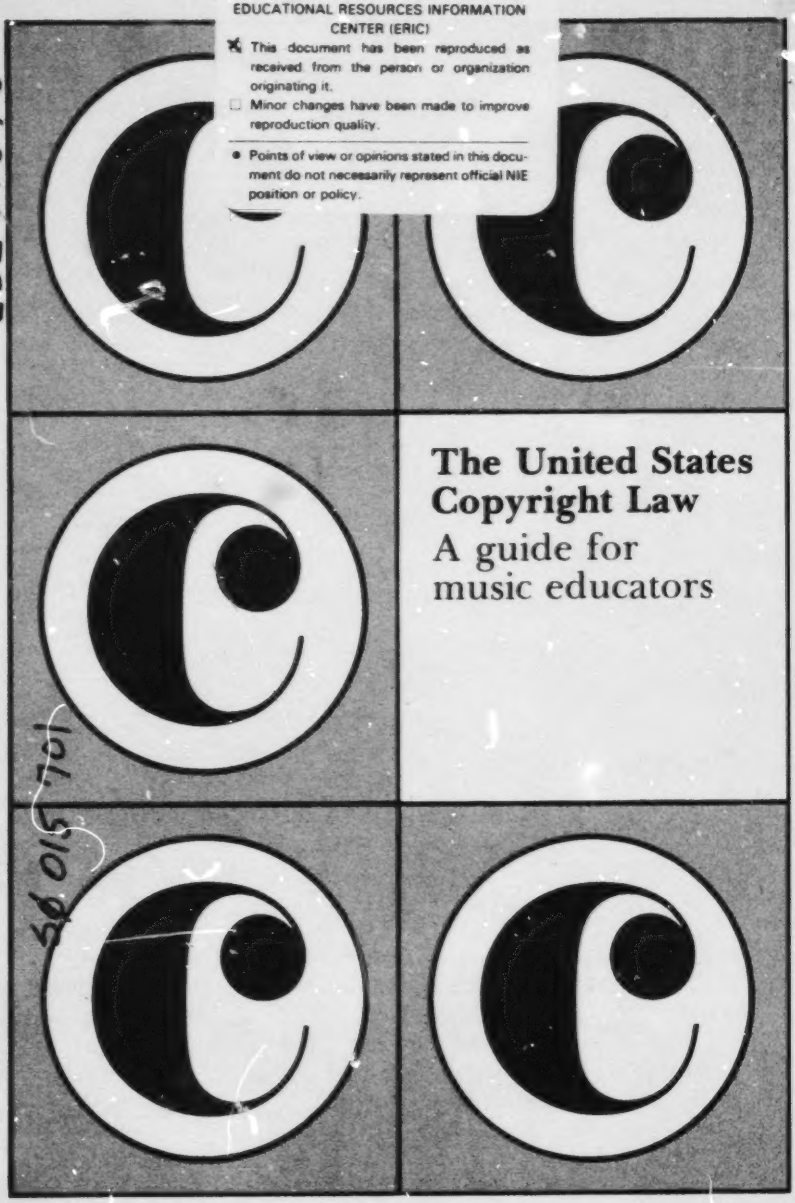

The United States Copyright Law

A guide for music educators

50 015 701

Issued jointly by

Music Educators National Conference • Music Publishers' Association Of The United States • Music Teachers National Association • National Music Publishers' Association • National Association Of Schools Of Music

1977

Guidelines for the use of copyrighted music material

Foreword

On the nineteenth day of October 1976, President Gerald R. Ford signed the nation's first comprehensive revision of our copyright law since 1909. This new law, though it provided for a transitional year in 1977, became fully effective on January 1, 1978. The organizations listed on the cover page have sponsored the preparation of this booklet to inform music educators of the provisions in this new statute that have particular application to teachers' uses of copyrighted materials.

No copyright is claimed in this booklet. You are encouraged to reproduce it in order to assure its widest possible circulation.

The 1976 Copyright Law must be regarded as a vast improvement over the earlier law from the point of view of educators. It is also a basic updating of the rights of authors in the light of new technologies. The statute clarifies what teachers may do and what they may not do. It reduces the instances in which securing permission might have previously been necessary. It also makes clear that there will continue to be the need to seek permission for certain other uses. The new Law specifically exempts certain educational, charitable and religious performances of music from royalty payments without the ambiguity of the old law. It relates to the technology of today's world. The new Law recognizes the special needs of critics, reporters, teachers, scholars and researchers without giving any of them unrestricted privileges.

It is a law that will need to be understood by music educators, both to improve their teaching and to protect themselves and their schools from incurring liability or subjecting themselves to the possibility of being sued.

Congress, in shaping the new Copyright Law, sought to achieve an equitable balance between creators and users. The organizations which have cooperated in preparing this booklet feel that to achieve such a desirable balance in the observation of the law on a day-to-day basis, two basic factors must be taken into consideration:

the pedagogical need of music educators for reasonable access to copyrighted materials,

balanced with:

the practical need for composers and their publishers to be properly compensated for their work in order that the economic incentive and means for the creation and publication of new materials important to educators not be inhibited.

If these are borne in mind in the practice and comprehension of the new law, a moral climate as well as a legal standard will result and serve to guide all those concerned.

Rights of copyright owners

The U.S. Copyright Law is designed to encourage the development of the arts and sciences by protecting the work of the creative individuals in our society—composers, authors, poets, dramatists, choreographers and others. The law deals first with the exclusive rights belonging to the owner of a copyright. These rights, as stated in the law, are:

1. **to reproduce the copyrighted work in copies or phonorecords;**

2. **to prepare derivative works based upon the copyrighted work;**

3. **to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;**

4. **in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and**

5. **in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.**

Limitations on these rights

Once these primary rights are granted, the law proceeds to limit them in certain specific instances. Some of these limitations grant special privileges to teachers. One group of limitations is embodied in the section of the law which outlines the concept of "fair use" in statutory terms for the first time. For example, courts have always regarded quotations of an excerpt from a work, in a review for purposes of illustration or comment or for a news report, as constituting "fair use". Among other limitations are those having to do with library copying, educational and religious performances of non-dramatic literary or musical works, and educational broadcasting.

1. To reproduce.
Limitations upon the exclusive right to reproduce a copyrighted work are dealt with in Sections 107 (Fair Use) and 108 (Library Copying). These sections, as they appear in the law, are reproduced in their entirety in Appendix A.

For such purposes as "criticism, comment, news reporting, teaching, scholarship, or research" the Fair Use provision establishes four factors for determining whether uses for these purposes may be judged "fair", and therefore not an infringement of the owner's rights. The factors are:

1. Purpose and character of the use—(commercial or educational?)

2. Nature of the work—(epic poem, art song, limerick, novel, opera?)

3. Amount and substantiality of the portion used—(how much is being copied?)

4. Effect on the potential market for or value of the work—(Is the owner being denied what could be expected as a financial return from his work?).

The Committee Report of the 90th Congress in 1967 contained discussion of these four factors. In 1975, it was recognized that further clarification was needed and two sets of guidelines were drawn at the request of the House Copyright Subcommittee. One, on Music Materials, was developed by the organizations which sponsor this booklet and the other on Books and Periodicals by representatives of author, book publisher and educator organizations. Both sets of Guidelines appear as Appendices B and C of this booklet.

On the basis of these elaborations of the intent of the law itself, it appears that, without having secured permission, music educators will be able to:

– **Make a copy of a lost part in an emergency if it is replaced with a purchased part in due course** (See Music A-1, page 17).

– **Make one copy per student of up to 10% in the case of musical works for class study as long as that 10% does not constitute a performable unit** (See Music A-2 and Books and Periodicals II, pages 17 & 21).

– **Make a single recording of a student performance for study and for the archives** (See Music A-4, page 18).

– **Make a single recording of aural exercises or tests using copyrighted material** (See Music A-5, page 18).

– **Preserve or replace library copies when not available for purchase** (See Section 108-b-c of the law)

– **Make one copy of a short verbal or a graphic work for teacher's use** (See Books and Periodicals I A through C).

The following are *expressly prohibited:*

—Copying to avoid purchase.
—Copying music for any kind of performance (note emergency exception above).
—Copying without including copyright notice.
—Copying to create anthologies or compilations.
—Reproducing material designed to be consumable such as workbooks, standardized tests and answer sheets.
—Charging students beyond the actual cost involved in making copies as permitted above.

2. To record.
The copyright owner has the exclusive right to reproduce copyrighted works in phonorecords. Several exceptions to this right are not infringements according to the Guidelines as outlined above. In addition to recording music as part of the learning process, music educators may occasionally wish to record student performances and distribute copies of the recording within the community. Once phonorecords of a non-dramatic musical work have been distributed to the public in the U.S. under the authority of the copyright owner, any other person may obtain a compulsory license to record the work by complying with certain procedures and by the payment of the royalty provided in the new law of 2 ¾¢ per selection or ½¢ per minute of playing time, whichever is greater.* It must be borne in mind that the first recording of a work and its distribution in recorded form requires the consent of the copyright owner.

3. To prepare derivative works.
Making arrangements of a piece of music is an exclusive right of the copyright owner but under the Music Guidelines amplifying the Fair Use section of the law the following are, with specified limitations, conceived to be reasonable exceptions:

—Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
—The compulsory license for recording (see the previous paragraph) includes the privilege of making a musical arrangement of a work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work. Quite obviously, this privilege is not meant to extend to "serious" compositions.

*Almost universally, licenses between those wishing to make phonorecords and the copyright proprietor are negotiated and obtained under modification of the compulsory provisions of the law. Thus, music educators who wish to make phonorecords may procure a license from the copyright proprietor. Many music publishers, however, use agents for licensing this right and a number of music publishers use The Harry Fox Agency as their agent for this purpose.

Anyone wishing to arrange a copyrighted work with the exceptions noted above must obtain permission from the copyright owner. In order to simplify this process, organizations who have participated in the preparation of this booklet have also prepared a standard form for request and grant of permission. A copy of this form is reprinted as Appendix D.

4. To distribute.

The one exception to the exclusive right of the copyright proprietor to distribute copies is that involved in the compulsory license relative to phonorecords as described above.

5. To perform.

Complete information concerning licensing of performances of copyrighted non-dramatic musical works may be obtained from ASCAP, BMI and SESAC.*

Although performance is one of the copyright owner's exclusive rights, the special needs of music educators, and others, are recognized in the limitations on these rights and are specified in Section 110. Music educators should take special notice of the very limited nature of these exemptions. The following are not infringements:

—Performance of any copyrighted work by instructors or pupils in the course of face to face teaching activities of a non-profit educational institution, in a classroom (or similar place devoted to instruction).

—Performance of a non-dramatic literary or musical work on closed circuit TV to other classrooms or to disabled students for teaching purposes, only if the transmission is part of the systematic instructional activities of a non-profit educational institution, and only if the performance is directly related and of material assistance to the teaching content of the program.

—Performance of a non-dramatic literary or musical work at a school concert if there is no purpose of direct or indirect commercial advantage, no fee or compensation paid to the performers,

*It should be emphasized that a performance of a dramatico-musical work—an opera, a ballet, a musical comedy, etc.—is customarily licensed by the copyright owner of the performing right, or his agent, rather than ASCAP, BMI or SESAC.

promoters or organizers, and no admission charge; if there is an admission charge, all of the proceeds must be used only for educational or charitable purposes. The performance may not take place if the copyright owner objects in writing *seven days before the performance.*

—Performance of non-dramatic literary or musical works or of dramatico-musical works of a religious nature, in the course of services at places of worship or at a religious assembly.

6. To display.
The owner of a lawfully acquired copy of a copyrighted work may display it to those present at the place where the copy is located. A teacher, as an agent of the school, presumably qualifies as the owner of a school-owned copy. The legislative report accompanying the law indicates that displaying the image of such a copy by an opaque projector would not be an infringement, whereas making an unauthorized copy—transparency, slide or filmstrip—to project would not be permissible. Only the owner of the copy has the privilege of displaying it.

Duration of Copyright

A major change in the law has to do with the length of the protection provided to copyright owners. Works created after January 1, 1978 will be protected for the life of the composer (author) plus 50 years. Copyrights in effect on that date, if renewed, will continue for 75 years from the date copyright was originally secured.

Those works in their initial 28-year period of copyright can be renewed for an additional 47 years, while the copyright of works presently in their renewal term are automatically extended for an additional 19 years.

Penalties for infringement

The remedies provided by the law to a copyright owner could mean that a music educator found making illegal copies, or otherwise infringing, could face:

1. Payment of from $250 to $10,000 (statutory damages) and if the court finds willfullness, up to $50,000;

and

2. If willful infringement for commercial advantage and private financial gain is proved, fines of up to $50,000 and/or two years' imprisonment, or both.

The nature of the remedies provided by the law indicates that copyright infringement is something more serious than a parking violation and needs to be viewed with concern. Teachers should know, however, that if the court finds that the infringer "was not aware and had no reason to believe that his or her acts constitute an infringement" it may reduce the minimum fine to $100.

Moreover, the court is further instructed "to remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107—if the infringer was . . . an employee or agent of a non-profit educational institution, library, or archives acting within the scope of his or her employment. . .".

This last quotation, from section 504-c-2, should in no way be considered by teachers as all the protection they need for anything they do. As always, ignorance of the law is no excuse. Music educators need to understand "fair use" and make the most of the privileges it grants, but they must also abide by its very definite limitations.

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Useful information

1. How to tell if a work is copyrighted.
All copyrighted works bear a copyright notice in which the date of copyright is included. Under the old law, the term of copyright was 28 years with the possible renewal of an additional 28 years. However, during the legislative process leading to the new law, all copyrights from September 19, 1906 which had been renewed but which would otherwise have expired were extended so that they did not fall into public domain. Thus, all subsisting copyrights, if renewed, will have, under the new law, a term of copyright of 75 years from the date copyright was originally secured. Since all copyrights subsisting on January 1, 1978 must have been or will have to be renewed at the end of 28 years in order to continue to be protected, there is a possibility that no renewal was or will be effected and the work is or will be in the public domain. This is unlikely in the case of those musical compositions with which music educators work. More likely, ephemeral publications such as advertising matter, catalogs, periodicals, etc. are the types of copyrighted matter not renewed. Therefore, to be safe, a music educator should assume that any publication which bears a copyright notice of 1906 or later is protected. The absence of a renewal notice is no assurance that the work was not renewed since it may be a copy predating that event. Also, there is no requirement under law to indicate "copyright renewed" on copies of the work.

2. Out-of-print works.
When copyrighted works are out of print it may be, occasionally, that music educators would like to procure a copy or copies for specific purposes. For that reason, the music publishers' trade associations have prepared a simple form relative to the procurement of out-of-print works. The form is reproduced as Appendix E.

3. Performing rights

The following are the addresses of the three performing rights organizations:

American Society of Composers, Authors & Publishers, (ASCAP)
One Lincoln Plaza
New York, NY 10023
(212) 595 3050

Broadcast Music, Inc. (BMI)
40 West 57th Street
New York, NY 10019
(212) 586 2000

SESAC, Inc.
10 Columbus Circle
New York, NY 10019
(212) 586 3450

4. Dramatic music

The above-named performing rights organizations do not license dramatico-musical works. These rights may be licensed by the publisher or, in some instances, by the following licensing agencies:

Tams-Witmark Music Library, Inc.
757 Third Avenue
New York, NY 10017
(212) MU8 2525

Rodgers & Hammerstein Library
598 Madison Avenue
New York, NY 10022
(212) 486 7378

Music Theatre International
119 West 57th Street
New York, NY 10019
(212) 975 6841

Samuel French, Inc.
25 West 45th Street
New York, NY 10036
(212) JU2 4700

5. Recording rights

The following is the address of the agency which handles recording rights for most music publishers:

The Harry Fox Agency
110 East 59th Street
New York, NY 10022
(212) 751 1930

6. Addresses of publishers

Sometimes, an educator who wishes to secure a license or permission to perform a dramatico-musical work, or to make an arrangement, or for some other copyright inquiry, may have difficulty in locating the copyright proprietor. The name, of course, may appear with the copyright notice on the title page or elsewhere in the publication. Sometimes, however, the publishing company has been absorbed by another; changed its name and address, or for some other reason is difficult to locate. The National Music Publishers' Association and/or the Music Publishers' Association of the United States will undertake to supply that information. While this may not always be possible, the information available to those organizations makes them the best source to assist all those who have difficulty in locating a music publisher.

National Music Publishers' Association, Inc. (NMPA)
110 East 59th Street
New York, NY 10022
(212) 751-1930

Music Publishers' Association of the United States (MPA)
Third Floor
130 West 57 Street
New York, NY 10019
(212) 582 1122

7. The Copyright Office

The Copyright Office, the Library of Congress, Washington, D. C., 20559 is a logical source of information about copyrights generally, and the process of protecting musical works.

Appendix A
The fair use and library reproduction sections of the new law

§107. Limitations on exclusive rights: Fair use
Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

§108. Limitations on exclusive rights: Reproduction by libraries and archives
a. Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—

1. the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

2. the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

3. the reproduction or distribution of the work includes a notice of copyright.

b. The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

c. The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

d. The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

1. the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

2. the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

e. The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

1. the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

2. the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

f. Nothing in this section—

1. shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

2. excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

3. shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

4. in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

g. The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

1. is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

2. engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

h. The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

i. Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

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Appendix B
Guidelines with respect to copyrighted music material

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible uses:

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

3. Printed copies which have been purchased may be edited OR simplified provided that the fundamental character of the work is

not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions:

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be "consumable" in the course of study or teaching such as workbooks, exercises, standard tests and answer sheets and like material.

3. Copying for the purpose of performance except as in A-1 above.

4. Copying for the purpose of substituting for the purchase of music except as in A-1 and 2 above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

Appendix C
Guidelines with respect to copyrighted books and periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Guidelines

A. Single copying for teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

1. A chapter from a book;

2. An article from a periodical or newspaper;

3. A short story, short essay or short poem, whether or not from a collective work;

4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

B. Multiple copies for classroom use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that*:

1. The copying meets the tests of brevity and spontaneity as defined below; *and*,

2. Meets the cumulative effect test as defined below; *and*,

3. Each copy includes a notice of copyright.

Definitions

Brevity

i. Poetry: a. A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

ii. Prose: a. Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

iv. "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

i. The copying is at the instance and inspiration of the individual teacher, and

ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative effect

i. The copying of the material is for only one course in the school in which the copies are made.

ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

C. Prohibitions as to A and B above

Notwithstanding any of the above, the following shall be prohibited:

Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

Appendix D

REQUEST FORM FOR PERMISSION TO ARRANGE

STANDARD FORM RECOMMENDED BY:

Music Educators National Conference, Music Teachers National Association, National Association of Jazz Educators, National Association of Schools of Music, Music Publishers' Association of the USA and National Music Publishers' Association.

REQUEST FOR PERMISSION TO ARRANGE

PART I

INSTRUCTIONS

This form is to be prepared in duplicate. After completing Part I and signing both copies where indicated, forward both to the publisher who will complete Part II of the form and return it to you. If the publisher indicates a payment for the right you request, and if the conditions are agreeable to you, remit the amount to the publisher together with the original copy, which he will have signed, whereupon the agreement will be completed.

To:_____ Date:_____
(Name of Publisher)

_____
(Address of Publisher)

Gentlemen:

We hereby request your permission and non-exclusive license to arrange the following musical composition:

_____

By:_____ (words)

_____ (music)

(hereinafter referred to as "The Arrangement")

1. The Arrangement will be for_____ (type of arrangement) in _____ (number of instruments and/or vocal parts). We will produce _____ copies of The Arrangement for use and performance only by our _____ (teachers, students, members, congregation, etc.) for which no admission fees shall be charged, or for performance otherwise exempt under the provision of the U.S. Copyright Law.

2. No right to record or to reproduce additional copies is granted to us. We understand that if we wish to record The Arrangement a separate license will be required. We agree not to distribute (except for use of copies as provided in Paragraph 1' sell, loan or lease copies of The Arrangement to anyone.

PART II

3. All copies of The Arrangement shall bear the following copyright notice and the words "Arranged by Permission":

at the bottom of the first page of music of each part of The Arrangement. We will furnish you with a copy of The Arrangement upon completion.

(over)

4. We will have The Arrangement made by a person connected with us as our employee for hire, without any payment obligation on your part. Your signature below, together with yours underneath the words "Permission Granted" below shall assign to you all of our right in The Arrangement and the copyright in The Arrangement together with the sole right of registering the copyright as a work made for hire in your name or the name of your designee.

5. Additional provisions (if applicable):

6. In consideration of your permission to arrange, we will pay you $_____ upon the granting by you of the permission requested.

7. This license agreement sets forth our entire understanding and may not be modified or amended except by written agreement signed by both of us.

Very truly yours,

_____
(Name of Organization)

_____
(Address)

By:_____

Permission Granted:

By:_____
(Publisher)

Permission denied because:

☐ 1. Arrangement available for sale.

☐ 2. Arrangement in process of publication for sale.

☐ 3. May not be arranged because of contractual commitments.

☐ 4. Other:_____

_____

Appendix E

INQUIRY FORM ON OUT-OF-PRINT MUSIC

INQUIRY FORM ON OUT-OF-PRINT COPYRIGHTED MUSIC

Prepared by: Music Publisher's Association of the United States, and National Music Publishers' Association Inc.

INSTRUCTIONS

This form is to be prepared in duplicate. After completing the boxed section and signing both copies where indicated, forward them to the publisher who will complete the form and return it to you. If the publisher indicates a payment for the right you request, and if the conditions are agreeable to you, remit the amount to the publisher together with the original copy, which he will have signed, whereupon the agreement will be completed.

To: _____
(Name of Publisher)

Address: _____

_____

I (We) wish to procure _____ copies of your copyrighted publication:

_____
(Title) (Arrangement)

by: _____

If it is in print:
Please indicate the price per copy here _____

If it is out of print:
A) Do you have plans to reprint it? _____ If so, when? _____

At what price per copy? _____

B) If there are no plans for reprinting I (we) request your permission to have a non-exclusive right to reproduce by photocopy _____ copies for use by my (our)

_____
(students, members, congregation, etc.)

As consideration for your permission to do so, I (we) will pay you in advance of making the copies _____ per copy, totalling $_____.
The copies will be identical to your publication including the copyright notice. The following will be legibly included on the first page of each copy of our reproduction:

"This reproduction is made with the express consent of _____
(copyright owner's name)
in accordance with the provisions of the United States Copyright Law."

I (We) acknowledge that I (we) are granted no right to sell, loan or otherwise distribute reproduced copies of the publication other than for the use set down above. No other rights of any kind for any other use are included in this permission.

If you do not grant the above permission, will you supply me (us) with _____ photocopies? _____ If so, at what price per copy? _____

_____

By: _____

Accepted and Agreed to: Address: _____

_____

_____ Date: _____

Coda

The 1976 Copyright Law is an honest attempt to balance the rights of the copyright proprietor with the needs of a democratic public and certain of its members such as teachers and librarians. The fact that it took Congress twelve years from the introduction of the first bill to the signing of the law is an indication of how far apart the various interests once were.

Authors, composers, and their publishers felt the need to protect the incentive for creative effort. Teachers, dependent on these creative products as the grist for their mill, were nevertheless also in need of the opportunity to be truly creative in their teaching without the tethers of over-restrictive regulations. The compromise represented by the 1976 law is the result of an empathy that developed over many years of discussion. Key to the understanding was the recognition of the need for the teacher to be able to catch the "teachable moment" without the hamstring provided by the necessity to secure permissions. Conversely, teachers had to recognize the temporary nature of "spontaneity" and be willing to secure permission, or even pay royalties, if continued use was to be made of the material. Coupled with the concept of "spontaneity" was "brevity", and only after some agreement was reached on what is brief (10%) could the prospect for helpful guidelines be foreseen.

Neither spontaneity nor brevity nor any of a number of other factors can be considered alone, however. The criteria for determining "fair use" that were agreed upon in 1967 must be taken in their entirety in application to a specific instance. Applied with the spirit of compromise that eventually manifested itself in the later years of discussion, the "fair use" section (107) should serve well.

As Bernie O'Donnell of the National Council of Teachers of English has written, the success of the guidelines is now dependent upon the integrity of the teachers and the trust of the creators and their publishers. Clarification by the 1976 law of what "fair use" means could contribute to a flowering of creative production and creative teaching, but only if all parties attempt to understand it as did those involved in the process of developing the legislation. Once understood, it must be used with integrity and mutual trust.